

LEGISLATIVE #

100767

Customer Agreement

This Customer Agreement (“Agreement”) is made on _____ (the “Effective Date”), between Gatso USA, Inc., a Delaware corporation with a principal business address at 900 Cummings Center, Suite 321-U, Beverly, Massachusetts 01915 (“Gatso”) and The City of Gainesville, FL, a municipal corporation of the State of Florida, with a principal business address at 200 East University Avenue, Gainesville, FL 32601 (the “City”).

WHEREAS, the City wishes to retain the technology and business services of Gatso to provide a red-light photo-enforcement program to monitor red-light violations and associated red-light traffic offenses as further defined in Section 4 of this Agreement (the “Services”), as part of the City’s automated traffic law enforcement program; and

WHEREAS, Gatso agrees to provide the Services, including the hardware and software to provide and implement a red-light photo-enforcement program (“System”), pursuant to the terms of this Agreement;

NOW THEREFORE, the parties mutually agree as follows:

1. CONTRACT DOCUMENTS

1.1 Contract Documents. Gatso shall provide the Services to the City as described in and pursuant to the terms and conditions in the following documents (collectively, the “Contract Documents”):

- a. All properly executed amendments to this Agreement, including all attachments and exhibits.
- b. This Agreement, including all attachments and exhibits.
- c. The Request for Proposals dated January 3, 2011, including two (2) addenda dated January 12, 2011 and January 24, 2011 (cumulatively the “RFP”); and
- d. The proposal submitted by Gatso on January 26, 2011, including all attachments and exhibits (“Proposal”).

1.2 Entire Agreement; Order of Precedence. The Contract Documents constitute the entire agreement between Gatso and the City. In the event of conflict or inconsistency between the Contract Documents, the order of precedence for interpretation and application shall be the order in which the Contract Documents are listed above. Conflict or inconsistency within a particular document shall be resolved by having the more specific reference to the matter prevail.

2. AGREEMENT TERM; TERMINATION

2.1. Initial Term; Extensions. The Agreement shall commence on the Effective Date and continue for a period of five (5) years (the “Initial Term”). Upon expiration of the Initial Term, the parties may mutually agree to renew this Agreement for up to two (2) subsequent two (2) year terms (each a “Renewal Term” and, collectively with the Initial Term, the “Term”) subject to renewal pricing that shall be provided by Gatso to the City no less than ninety (90) days prior to the expiration of the then-current Initial Term or Renewal Term.

2.2. Termination By Agreement. This Agreement may be terminated at any time by the mutual written agreement of Gatso and the City.

- 2.3. Termination For Cause. Either party may terminate this Agreement for cause if: (a) the other party has breached its obligations under this Agreement; (b) applicable law is amended to prohibit or substantially restrict the operation of automated traffic law enforcement systems, including the System being provided by Gatso; or (c) any court of competent jurisdiction issues a final ruling that the System, or other similar systems, violate(s) applicable law or cannot otherwise be used to enforce Notices of Violation or citations issued hereunder.
- 2.3.1 The City may terminate this Agreement for cause based on default by Gatso in the event of the dissolution or liquidation of Gatso, or the voluntary initiation by Gatso of any proceeding under any federal or state law relating to bankruptcy, insolvency, organization, readjustment of debt or any other form of debt relief, or the initiation against Gatso of any such proceeding which shall remain un-dismissed for sixty (60) days, or failure by Gatso to promptly have discharged any execution, garnishment or attachment of such consequence as would impair the ability of Gatso to provide the Services, or assignment by Gatso into an agreement of composition with its creditors or the failure by Gatso generally to pay its debts as they become due.
- 2.3.2 Notwithstanding the provisions of Section 2.3.4, the City may terminate the Agreement for cause based upon Gatso's failure to make any deposit or transfer of funds pursuant to Section 4.17 and such failure shall continue unremedied for a period of fifteen (15) days after such failure to make any deposit or transfer of funds.
- 2.3.3 The City may also terminate this Agreement for cause if Gatso fails to maintain its existence as more fully set forth hereinafter in Section 6.2.1(b) or to maintain a registered agent for service of process in the State of Florida, as more fully set forth hereinafter in Section 6.2.1(a).
- 2.3.4 For any termination pursuant to Section 2.3, the terminating party must provide twenty (20) days advance notice to the other party of its intent to terminate, which notice must include the reasons for the termination. In the case of a breach of this Agreement, the notice must provide the other party with an opportunity to cure the breach within thirty (30) days after receipt of the notice. No termination fee shall be required with respect to termination for cause pursuant to Section 2.3. Notwithstanding the foregoing, in the event of termination based upon Section 2.3(b) or (c), Gatso may suspend the System and all associated Services immediately upon the effective date of such amendment or ruling, as applicable.
- 2.4. Termination By City For Convenience. The City may terminate this Agreement at any time at its convenience by giving written notice to Gatso not less than thirty (30) days prior to the termination date. If the City terminates this Agreement for convenience at any time within the Initial Term, then the City must pay Gatso a fee in the amount of \$1,500 per fixed location camera (the "Termination Fee") for each month that remains in the Initial Term as of the termination date. The Termination Fee, if any, must be paid within thirty (30) days after the Effective Date of Termination as defined in Section 2.5. There is no Termination Fee if the City terminates at the end of the Initial Term or during any Renewal Term, or as provided in Section 2.3 or Section 4.14.
- 2.5. Cessation of Activities Except Pending Violations. On the termination date (if this Agreement is terminated for convenience pursuant to Section 2.4) or on the first day after any other date of termination or expiration of this Agreement ("Effective Date of Termination"), the image

capture activities provided by Gatso under this Agreement shall cease immediately. Nevertheless, unless otherwise prohibited by law, all photo-enforcement violations in process or captured prior to the Effective Date of Termination, will continue until final disposition is reached on the violations and Gatso will continue to provide Services related to the process leading to such judgment, if any.

- 2.6. Removal Of Hardware, Equipment; Restoration. Upon the Effective Date of Termination, Gatso shall promptly remove all hardware and equipment installed as part of its Services, which removal shall be completed no later than forty-five (45) days after the Effective Date of Termination. Upon removal of the hardware and equipment, Gatso shall restore the intersections to substantially the same condition as existed prior to this Agreement and repair any damage resulting from the installation or removal of Gatso hardware or equipment. Gatso shall use commercially reasonable efforts such that removal and restoration activities do not unreasonably interfere with or adversely affect traffic flow.

3. COMPENSATION

- 3.1. Amount. The City shall pay to Gatso the following fees for the System and related Services subject to the Adjustment to Fees set forth in Section 3.2.3 below:

- 3.1.1. A “Monthly Fee” of \$4750 per camera installation per month, commencing on the first day after the Warning Period ends. The Monthly Fee will include the provision of all Systems and the Services during such month. As used herein, the “Warning Period” means a period of 30 days beginning on the date that a camera has been installed and interconnected with the City’s traffic system in accordance with the requirements of the Agreement during which the cameras will be used for monitoring and warnings but not for issuing Notices of Violation or Uniform Traffic Citations. This “Monthly Fee” includes the availability of integrated Amber Alert capability referenced in the RFP. The Monthly Fee shall also include Silver and Blue Alert capability as well as other similar alert systems implemented by State of Florida statute or regulation.
- 3.1.2. An “Amber/Silver/Blue Alert” additional fee of \$15.00 per hour for each installed camera used in excess of 2.5 hours per calendar month for one (1) or more Amber/Silver/Blue Alerts, when the City requests or authorizes such alert usage.

- 3.2. Fee Payment.

- 3.2.1. Gatso shall provide an itemized, monthly invoice to the City within ten (10) days of the first business day of the month. Gatso will provide the first invoice hereunder to the City in the month immediately following the expiration of the Warning Period.
- 3.2.2. For the first invoice issued by Gatso pursuant to this Agreement, payment shall be due sixty (60) days from the date of receipt of a proper invoice. Thereafter, for each bill issued by Gatso, payment shall be due within thirty (30) days from the date of receipt of a proper invoice. In order to facilitate payment by EFT (“Electronic Funds Transfer”), Gatso will complete a vendor packet, including providing a routing number and any needed authorizations, prior to the submission of any invoice. All payments by the City will be made through EFT. Except for the first invoice, Gatso reserves the right to charge a late fee of 1% per

month (12% per annum), or the highest rate allowed by applicable law, whichever is lower, commencing 45 days from the date of receipt of a proper invoice.

- 3.2.3. Adjustment to Fees. The Monthly Fee paid by the City to Gatso pursuant to Section 3.1.1, shall not exceed the monthly revenue received by the City from operation of the System for that month, less any amounts owed to other entities as required by law and any Credit Card Convenience Fees retained by Gatso as defined in Section 4.16, (hereinafter the “Adjusted Monthly Revenue”). The amount by which the Monthly Fee exceeds the Adjusted Monthly Revenue for any calendar month shall be carried over into the following monthly invoice, and shall be paid by the City as subsequent Adjusted Monthly Revenues exceed subsequent total monthly fees.
- 3.2.4. Cost Neutrality. If, as of the Effective Date of Termination or the date of any expiration of this Agreement, there remains an unpaid balance of total monthly fees due to insufficient Adjusted Monthly Revenue, Gatso shall waive such amounts due.
- 3.2.5. Fees are Sole Compensation. The fees required pursuant to this Section 2 shall be Gatso’s sole compensation for the Service described herein. Except as explicitly set forth herein, all costs and expenses associated with the supply, installation, commissioning, operation, maintenance, repair, replacement, and removal of the System and all related hardware and equipment shall remain the responsibility of Gatso.

4. SCOPE OF WORK

- 4.1. Gatso Project Manager. Gatso will designate one Gatso employee as the City’s principal contact at Gatso (“Gatso Project Manager”).
- 4.2. The System. Gatso shall install, operate, and maintain the System in accordance with Gatso’s standard installation practices at locations set forth in Exhibit A. Gatso and the City will mutually agree on the identification of camera enforced approaches based on community safety and traffic needs.
- 4.3. Compliance with State and Local Laws. Gatso shall comply with all Florida Statutes, and City of Gainesville Ordinances, applicable to Gatso’s performance of the Services.
- 4.4. Obtaining Permits. Gatso shall prepare all permit applications, design drawings or other related documents as may be reasonably required by the City or any other governmental entities for the installation and operation of the System. Gatso will use commercially reasonable efforts to obtain any necessary permits for the System from applicable departments or agencies and shall pay all permit or other fees charged by such governmental entities in connection with the installation and operation of the System. The City will reasonably assist Gatso in securing necessary permits as required.
- 4.5. Installation. Gatso will commence installation of the components of the System within ten (10) business days after any and all necessary State of Florida, County, and City permit applications have been approved and such permits have been received. Gatso shall not be responsible for any delays associated with the failure of any state or local government to promptly provide applicable permits. In the event any permitting agency requires one (1) or more upgrades to City owned or controlled equipment at any intersection where the System will be installed, such upgrades shall be the sole responsibility of the City. Gatso will add a separate circuit breaker to the traffic control system power source to obtain electric power for

the System unless otherwise authorized by the City or the Florida Department of Transportation. Gatso will use commercially reasonable efforts to complete installation of the System in a timely manner. Except in the event of a Force Majeure as defined in Section 6.3, failure to commence and complete installation of the System within 120 days of the Effective Date will, at the City's option, be grounds for termination of this Agreement with no monies or obligations due to Gatso from the City. In such event, no additional notice or cure period is required.

- 4.6. Initial Locations; Modification Requests. The System will remain installed at the locations set forth in Exhibit A for the Initial Term of this Agreement, except that Gatso and the City may agree, at any time, to relocate one (1) or more System components from one intersection to a different intersection. The City may request the addition of approaches, the relocation or removal of cameras, and other changes in Services during the Term, by providing written notice thereof to Gatso ("Modification Request"). Following receipt of such Modification Request, Gatso will deliver to the City a written statement describing the effect, if any, the requested changes would have on pricing under this Agreement. Gatso and the City will then enter into negotiations of the terms associated with the Modification Request, including, but not limited to, the time and manner of implementation, and pricing. It will not be a breach of this Agreement by either party if the City and Gatso cannot reach agreement on the terms of the requested changes. In such event, the Agreement will continue in full force and effect without the requested modifications. No adjustment to pricing is required as a result of such election.

4.6.1. Right turn on Red Enforcement Policy. As of the Effective Date, the City has elected not to issue Notices of Violation or Uniform Traffic Citations based upon right turn on red violations. If the City in the future chooses to add such violations to those it enforces through use of the System, it will provide no less than thirty (30) days' notice to Gatso, to allow any additional training of personnel, posting of the additional required signage, and adjustment to procedures. No adjustment to pricing is required as a result of such election.

- 4.7. Signage. Gatso will provide and install standard Gatso signage, in accordance with all applicable state and local requirements, and in accordance with the RFP and Proposal, for each approach road to an enforced intersection at no additional cost to the City. Gatso shall also provide non-standard signage specified by the City (such as signs that include welcome messages, logos, or other features), but the City shall bear all extra costs attributable to any such non-standard features if not otherwise required by State statute or regulation. Those extra costs shall be included in the first invoice issued by Gatso to the City under this Agreement. All signage must be approved by the City prior to installation by Gatso.
- 4.8. 24-Hour Operation. Gatso shall operate the System on a continuous, 24-hour basis, seven (7) days per week, except for reasonable scheduled and unscheduled downtime, including System maintenance and repairs as set forth in Section 4.9, and Force Majeure as set forth in Section 6.3.
- 4.9. System Maintenance; Repairs; Logs. Gatso shall maintain the System and shall promptly repair or replace any damaged or defective equipment at its own expense except if the damage was caused by the negligent operation of a City owned or controlled vehicle. Gatso shall perform preventative maintenance and cleaning of System components on a regularly scheduled basis, including review, cleaning and testing of camera settings and operation, communications, and other System components. Gatso will initiate repairs within 24 hours, and complete repairs within 48 hours, after receipt of notice from the City of the damage or defect. Gatso's response time for emergency repairs, such as damaged poles, that may

constitute public hazards, shall be two (2) hours from receipt of notice from the City of such emergency condition. The response times set forth in this Section 4.9 shall apply unless Gatso is prevented from compliance due to extreme weather conditions or other Force Majeure Event as defined in Section 6.3. Gatso shall maintain either personnel or qualified subcontractors for work pursuant to this Section 4.9 within a 50-mile radius to the City.

4.9.1 Liquidated Damages for Failure to Repair or Replace. Gatso understands and agrees that the City will suffer financial losses that, by their nature, are difficult to ascertain or calculate should Gatso fail to comply with the repair and replacement provisions set forth in Section 4.9 above. Accordingly, and in lieu of actual damages or proof thereof, If Gatso fails to comply with these provisions, Gatso shall be liable to the City for liquidated damages equal to 1/30th of the Monthly Fee set forth in Section 3.1.1 for each impacted camera, for each twenty-four (24) hour period during which Gatso remains in non-compliance with the repair and replacement provisions of Section 4.9. Gatso shall deduct any applicable liquidated damages amounts from the applicable invoice to the City.

4.9.2 Failure to Repair Constitutes Breach. At the option of the City, any failure to repair or replace any damaged or defective equipment extending beyond seven (7) days may be considered a breach of the Agreement, such as to allow termination for cause pursuant to Section 2.3, subject to the notice and cure provisions of Section 2.3.4 of this Agreement.

4.9.3 Logs and Records. Gatso will provide to the City any logs, certificates, testing, or maintenance records, or similar documentation or testimony reasonably required to prosecute violations, at no additional cost to the City. These logs and records shall be maintained by Gatso for a time period complying with the relevant retention of records schedules for these types of governmental records or as otherwise provided by Florida Law.

4.10. System Upgrades. In the event Gatso makes upgrades to the software or related performance capabilities of the System generally available to its customers, Gatso will provide such upgrades without charge to the City.

4.11. City Personnel Training. Gatso will provide System training, including training documentation, to City personnel designated by the City.

4.12. Images and Data; Violation Package. Gatso will upload encrypted violation images and embedded violation data to a Gatso server in a timely manner. Gatso shall correlate images and data with DMV records, and shall assemble the images and data into an electronic violation package (a "Violation Package") in such a manner so as to allow the City to carry out those responsibilities set forth in Section 5.3 of this Agreement.

4.13. Processing Of Violation Package. Gatso shall process Violation Packages through a system that shall be accessible by the City's designated enforcement personnel and/or traffic infraction enforcement officers through the internet to review, and approve or reject, each violation before a Notice of Violation is issued related to that violation. Gatso shall notify the City of the list of supported web browsers for accessing this system. Gatso will process violation images and send Violation Packages to the City's designated enforcement personnel and/or traffic infraction enforcement officers for review within four (4) business days after the violation has occurred. Gatso shall provide reasonable aid and assistance in enforcement of the City's red-light ordinance, including the provision of witnesses (including expert witnesses

at contested hearings), as may be required in a court or quasi-judicial panel of competent jurisdiction.

- 4.14. Notices of Violation. After review and approval by the City's designated enforcement personnel and/or traffic infraction enforcement officer(s) of a violation as set forth in Section 5.3, Gatso shall issue a Notice of Violation, in compliance with F.S. §316.0083, with images and data related to the Notice of Violation, by mail within thirty (30) days. The System shall allow the registered owner or owners of a cited vehicle to review the images and data related to the Notice of Violation, through the web-portal by using a unique identifier code issued as part of the notice of violation. Additionally, Gatso will maintain a toll-free telephone number for registered owners to discuss Notices of Violation and make payments, with hours of 8:00 a.m. to 5:00 p.m. (Eastern) Monday through Friday, not including state and federal holidays. As of the Effective Date, Gatso is in the process of engaging a new call center services vendor that will offer extended hours to accommodate the needs of the City's working and student communities. Upon transition to such vendor and no later than the date on which Gatso makes after-hours, week-end or holiday telephone support available to other Gatso customers in Florida, Gatso shall make such extended hours available to the City at no additional charge. In the event Gatso fails to make such extended hours available to the City during the first six (6) months of operation of the System, the City may terminate the Agreement for convenience without penalty as set forth in Section 2.4.
- 4.15. Customer Service. Gatso acknowledges and agrees that a material provision of this Agreement is the courteous interaction and communication with persons cited. In interactions with such persons Gatso will act as the City's representative, and will treat callers or persons interacted with in a manner so as to avoid causing the City to appear uncaring, unconcerned, or unresponsive
- 4.15.1. Gatso will provide to the City copies of any scripts or procedures for responding to callers on the toll free line responding to the Notices of Violation or any rules or regulations relating to standards of decorum or customer care to be utilized in dealing with citations arising from the City's Red Light Camera Program and/or the System (the "Rules"). The City will have the right to review and approve any such Rules.
 - 4.15.2. The Rules may include a method of escalating certain inquiries (such as, for example, calls relating to inquiries specific to the jurisdiction itself) to an assigned City of Gainesville employee or the certified traffic infraction officer.
 - 4.15.3. The Rules may also require referrals to web pages (whether created and maintained by Gatso or the City) specific to citations arising from the City's Red Light Program or system (addressing city specific information such as locations of the City's red light cameras, the ordinances authorizing the programs, or to other information specific to the City).
 - 4.15.4. The Rules may also require utilization of customer service scripts that are different than the generic Gatso violation processing center scripts once the caller or consumer is identified as calling or communicating regarding a City based violation.
 - 4.15.5. The City shall set customer responsiveness standards, including time of turnaround on calls or complaints, levels of customer satisfaction, and similar measures of performance. An example of proposed performance standards is attached hereto as Exhibit B. However, these standards may

be modified or updated as needed to accommodate the changing and developing natures of the services provided.

4.16. Payment Methods; Collection of Infraction Fees. Gatso shall provide the registered owner or owners of a cited vehicle the following payment methods: “pay by web,” “pay by telephone,” and “pay by mail” for the payment of Notices of Violation issued through the System. Gatso may pass through to violators any reasonable credit card convenience fees imposed upon Gatso by its suppliers for violations paid by credit card (“Credit Card Convenience Fee”). Any registered owner who does not wish to pay the Credit Card Convenience Fee may remit payment to Gatso by mail in the form of a money order or check drawn upon a U.S. bank. The City shall have no obligation for the payment of any Credit Card Convenience Fees.

4.17. Collection of Infraction Fees. Gatso will collect infraction fees from those who voluntarily pay in response to notices issued by Gatso. Once per calendar week, Gatso shall place such fees in a separate account with Key Bank, a bank selected by Gatso that is a nationally chartered bank or such other banking institution approved by the City (“Master Account”). The Master Account shall be established in a manner which permits only the City to withdraw funds. The City shall not be responsible for any bank or transaction fees arising from the Master Account.

4.17.1. All fees received and funds deposited by Gatso in the Master Account shall be held in trust for the City, and shall not be subject to lien or attachment by any creditor of Gatso.

4.17.2. In the event fees collected by Gatso are transferred to the Master Account within seven (7) days of receipt by Gatso, Gatso shall not owe any interest to the City paid on such funds .

4.17.3. In the event that fees collected by Gatso are not transferred to the Master Account within seven (7) days, Gatso shall be responsible to pay to the City any interest accrued or earned for said funds.

4.18. Procedure for Issuance of Uniform Traffic Citations.

4.18.1. Issuance of Uniform Traffic Citation for Unpaid Notices of Violation. If a registered owner fails to make payment within 30 days in response to a Notice of Violation, the City’s traffic infraction enforcement officer will provide a package for review, and will decide whether to authorize issuance of a Uniform Traffic Citation in accordance F.S. §316.0083 (1)(c)1.c-d.

4.18.2. Issuance of a Uniform Traffic Citation Based on Affidavit of Different Driver/Violator. If a registered owner disputes responsibility for a violation and a different violator is identified by the recipient of the Notice of Violation in the form of the affidavit called for under §316.0083 (1)(d)3, then the City’s traffic infraction enforcement officer will be provided this information/affidavit for review, and will decide whether to authorize issuance of a Uniform Traffic Citation to that different violator within ten (10) days after such identification.

4.18.3. Processing of Uniform Traffic Citations. Upon authorization of issuance of a Uniform Traffic Citation by the City’s traffic infraction enforcement officer pursuant the Sections 4.18.1 and 4.18.2, Gatso will process each Uniform Traffic Citation (“UTC”) to the point of issuance in a timely manner to facilitate compliance with time guidelines in F.S. §316.0083, including doing each of the following, to the extent permitted or required under Florida laws and regulations; (a) upon the City’s determination to issue a UTC, providing the completed but

unexecuted UTC to the City for the City's execution; (b) upon receipt of the executed UTC from the City, mailing the UTC and any other documentation to the violator; and (c) transmitting to the Clerk of Court, and any other agencies required to receive such information, all documentation necessary for the judicial processing of the UTC. Consistent with these responsibilities, Gatso will ensure that the software used to transmit UTCs and required data complies with all applicable requirements of the Clerk of Court and other agencies such as the Florida Department of Highway Safety and Motor Vehicles. Whether performed by Gatso or a subcontractor, this function must be done by a UTC-approved vendor with the Florida Highway Safety and Motor Vehicles Division of Driver Licenses, Bureau of Records.

4.18.4. Funds Collected by the City in Connection with a Uniform Traffic Citation. Any funds collected by the City in connection with a Uniform Traffic Citation issued pursuant to Section 4.18 shall be deposited into the Master Account described in Section 4.17.

4.19. Storage Of Violation Packages. Gatso will store all captured violation data and images pursuant to the policy established by the City and communicated to Gatso prior to the Effective Date. The City shall have reasonable access to the Violation Packages during the storage period. These violation packages shall be maintained by Gatso for a time period complying with the relevant retention of records schedules for this type of governmental record or as otherwise provided by Florida Law.

4.20. FDLE Requirements. All authorized subcontractor personnel reviewing the vehicle registration information obtained via the National Law Enforcement Telecommunications System ("NLETS"), and the FCIC II Message Switch on behalf of the City shall be current in CJIOS Online certification as prescribed by the Florida Department of Law Enforcement ("FDLE"). Gatso and authorized subcontractor personnel shall not view or store any Hot File information on behalf of the City. Gatso and its authorized subcontractor personnel shall comply with access and dissemination policies for any information obtained via a query processed through the FCIC II Message Switch.

4.21. Records; Reports. Gatso shall provide monthly reports to the City comprised of statistics relating to the functioning of the System, including but not limited to the number of captured violations, the number of violations sent for approval by the City's designated enforcement personnel and/or traffic infraction enforcement officers, the number of Notices of Violation issued, the number of Notices of Violation paid, the number of contested Notices of Violation, the amount of scheduled and unscheduled downtime of the System, and such other data as may be reasonably requested by the City. The City shall be responsible for the submission of any reports mandated by the State of Florida with regard to the operation of the System. Gatso will provide reasonable assistance at the City's request.

4.22. Audit. Gatso will allow the City, or its designee that is reasonably acceptable to Gatso, to conduct regularly scheduled audits/reviews not more than twice annually. Additional audits or review may be conducted upon request of the City Commission. The City may audit the following records of Gatso: (i) those underlying the statistics to be reported pursuant to Section 4.21; (ii) those related to the collection of infraction fees; (iii) those related to the Master Account, including but not limited to interest accrued and administration fees; and (iv) any and all financial records reasonably related to Gatso's compliance with the provisions of the Agreement.

4.23. Public Awareness. Gatso shall assist and support the City's efforts in public education and awareness programs, by providing information including, but not limited to, violation statistics

and violation statistic improvements. Gatso shall provide the City with a pamphlet that the City may reproduce and distribute to City residents that include a description of the operation of the System in non-technical terms. Funds allotted by Gatso for public awareness efforts and education shall be no less than \$50,000.00 during the Term.

- 4.24. Insurance. Gatso shall, during the Term, maintain insurance coverage in at least the minimum amounts set forth in this Section 4.24. In the event the IDOT, FDOT or the Intergovernmental Risk Management Agency require additional coverages or coverage amounts, the City shall notify Gatso of such requirements and Gatso shall update the insurance coverages maintained pursuant to this Section 4.24 within thirty (30) days of such notice.

4.24.1. Workers' Compensation and Employer's Liability with limits not less than:

Workers' Compensation:	statutory
Employer's Liability:	\$500,000 ea. accident-injury
	\$500,000 ea. employee-disease
	\$500,000 disease-policy

This insurance shall provide that coverage applies to the State of Florida.

4.24.2. Comprehensive Motor Vehicle Liability with limits for vehicles owned, non-owned, or rented of not less than \$1,000,000 Bodily Injury and Property Damage Combined Single Limit.

4.24.3. Pubic Liability Insurance (other than automobile) consisting of broad form Comprehensive General Liability Insurance, with limits not less than \$1,000,000 Bodily Injury and Property Damage Combined Single Limit.

4.24.4. Umbrella Liability with limits not less than \$2,000,000 Bodily Injury and Property Damage Combined Single Limit. This policy shall apply in excess of the limits stated in 4.24.2 and 4.24.3 above.

4.24.5. Fidelity Bond. Gatso shall provide a Fidelity Bond naming the City as Loss Payee for all employees providing the described services to the City, in the amount of \$250,000.

4.24.6. Performance Bond. Gatso shall provide a Performance bond, naming the City as the loss payee, in the amount of \$250,000 Said performance bond shall specifically provide protection, against the attachment, garnishment, or freezing of the account by any creditors of Gatso of any funds held on behalf of the City by Gatso prior to said money being transmitted or transferred to the City.

4.24.7. Additional Insured. Gatso shall list the City as an additional insured under all of the policies described in this Section 4.24 and shall file with the City certificates of insurance reflecting the minimum insurance coverage and limits provided in this Section 4.24 prior to commencing work on the System.

4.24.8. Proof of Insurance. Gatso shall furnish proof of insurance and bonds acceptable to the City prior to or at the time of execution of the Agreement and Gatso shall not commence work under this Agreement until Gatso has obtained all the insurance and bonds required under this Agreement and such insurance and bonds have been filed with and approved by the City. Nor shall Gatso allow any

subcontractor to commence work on its subcontract until similar insurance required of the subcontractor has been so obtained and approved. Gatso shall furnish evidence of all required insurance and bonds in the form of certificates of insurance which shall clearly outline all hazards covered as itemized above the amounts of insurance applicable to each hazard, the expiration dates and shall contain the following language as to cancellation: "in the event of cancellation of this policy by the insurer or any insured, this company shall give not less than thirty (30) days advance written notice to: Risk Manager, the City of Gainesville, P.O. Box 490 Station 60, Gainesville, Florida 32627."

4.24.8.1. If requested by the City, Gatso will furnish copies of the insurance contracts or bonds to support the certificates of insurance or bonds and the copies of said insurances or bonds must be acceptable to the City. Gatso shall file any replacement certificates or bonds 30 days prior to the expiration or termination of the required insurance or bonds. In the event such insurance or bonds shall lapse, the City expressly reserves the right to renew the insurance or bonds at Gatso's expense and such expense may be offset against the Monthly Fees otherwise due to Gatso until paid.

4.24.8.2. All insurance or bonds required hereunder shall be maintained with good and reputable insurance or bond companies permitted to do business in Florida.

5. CITY RESPONSIBILITIES

- 5.1. City Project Manager. The City will designate one City employee as Gatso's principal contact at the City ("City Project Manager").
- 5.2. Cooperation. The City will cooperate with Gatso during all aspects of the planning, installation, implementation, and operation of the System and perform any other City obligations set forth in this Agreement.
- 5.3. Review Of Violations. The City will provide designated enforcement personnel and/or traffic infraction enforcement officer(s) to carefully review each Violation Package to determine whether: (a) the violation is approved and Notices of Violation can be mailed or (b) the violation is rejected. If the violation is rejected, the designated enforcement personnel and/or traffic infraction enforcement officer(s) will report to Gatso the basis for the rejection. The City is solely responsible for determining which violations identified by Gatso are issued as citations.
- 5.4. Access to Information Services. To the extent required by NLETS, the City will provide written authorization (in a form reasonably acceptable to the City) for Gatso's permitted subcontractor CMA Consulting Services, Inc. ("CMA") to perform DHSMV inquiries on behalf of the City. The City will also enter into any Supplemental Agreement required by FDLE and/or DHSMV in order for Gatso and its permitted subcontractor, CMA, to perform the obligations pursuant to the Agreement. Any employees of Gatso or CMA who require access to the information services will submit and pass any fingerprint and/or records checks required for such NLETS access.

6. GENERAL PROVISIONS

6.1. Liability of the Parties; Indemnification Obligations.

6.1.1. Nothing herein shall be deemed or considered to be any waiver of any statutory or common law sovereign immunity to which the City may be entitled.

6.1.2 Gatso shall indemnify, defend, and hold harmless the City and its elected officials, officers, employees, agents, attorneys, representatives and permitted assignees (the "City Indemnitees") from and against any and all third party claims arising out of or related to:

- a. any material breach of the representations and warranties of Gatso set forth in Section 6.2.1;
- b. negligence or misconduct of Gatso or its employees, contractors, or agents that results in bodily injury to any natural person (including third parties) or any damage to any real or tangible personal property (including the personal property of third parties), except to the extent caused by the negligence or misconduct of the City; or
- c. a claim that the System infringes the copyright or U.S. patent of a third party. In the event such a claim is made or appears likely to be made, Gatso will either: (a) enable the City to continue to use the System, (b) modify the System to render it non-infringing; or (c) replace the System with a replacement System at least functionally equivalent. If Gatso determines that none of these alternatives is reasonably available, Gatso shall have the right to terminate this Agreement effective immediately.

6.1.3 In the event any third party claim, action, or demand for which the City seeks indemnification from Gatso pursuant to Section 6.1.1 (each a "Claim"), the City must give Gatso written notice of such Claim promptly after the City first becomes aware of it. Gatso will have the right to choose counsel to defend against the Claim (subject to approval of such counsel by the City, which approval may not be unreasonably withheld, conditioned, or delayed) and to control and settle the Claim. The City will have the right to participate in the defense of the Claim at its sole expense.

6.1.4 LIMITATION OF DAMAGES FOR LOST PROFITS OR OPPORTUNITIES. THE CITY SHALL NOT BE ENTITLED TO SEEK DAMAGES IN THE FORM OF LOST PROFITS OR LOST OPPORTUNITY IN CONNECTION WITH ANY CLAIM UNDER THIS AGREEMENT.

6.2. Representations and Warranties.

6.2.1. Gatso represents and warrants that at all times during the Term:

- a. Gatso is a valid and existing corporation registered to do business in the State of Florida, that it is not in violation of any provision of its articles of incorporation or bylaws, has the corporate power to enter in this Agreement and all requisite power and authority to carry on its business as now conducted, to own or hold property and to enter into and perform the obligations of this Agreement and each instrument to which it is or will be a party, that it has consented to service of process in the State of Florida, and has and will maintain a registered agent in the State of Florida for these purposes, that it has duly authorized the execution and delivery of this Agreement,

and that it is duly qualified to do business and is in good standing under the laws of the State of Florida;

- b. Gatso will maintain its existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another legal entity or permit one or more other legal entities to consolidate with or merge into it unless Gatso is the surviving entity, without prior consent of the City which such consent shall not be unreasonably withheld or delayed.
- c. The System is provided and will continue to perform in accordance with the Contract Documents.
- d. The Services described herein will be performed in a workmanlike and professional manner with due care and skill, and in accordance with specifications set forth in the Contract Documents.
- e. Gatso will perform the Services in compliance with all applicable federal, State of Florida, and local laws including without limitation the Fair Labor Standards Act; any statutes regarding qualification to do business; any statutes prohibiting discrimination because of, or requiring affirmative action based on, race, creed, color, national origin, age, sex, sexual orientation, gender identity, or other prohibited classification including without limitation the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq*;
- f. Gatso is not barred by law from contracting with the City or with any other unit of state or local government as a result of a delinquency in the payment of any tax administered by the Florida Department of Revenue unless Gatso is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax or the amount of the tax;
- g. The only persons, firms, or corporations interested in this Agreement as principals are those disclosed to the City prior to the execution of this Agreement and this Agreement is made without collusion with any other person, firm, or corporation. If at any time it shall be found that Gatso, in procuring this Agreement, has colluded with any other person, firm, or corporation, then Gatso will be liable to the City for all loss or damage that the City may suffer thereby, and this Agreement will be null and void, at the City's option; and
- h. Neither Gatso nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specifically Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of a Specifically Designated National and Blocked Person. Gatso further represents and warrants to the City that Gatso and its principals, shareholders, members, partners, or affiliates, as applicable, are not, directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Agreement on behalf of any person or entity named as a Specifically Designated National and Blocked Person.

6.2.2. The City represents and warrants that at all times during the Term:

- a. it has the legal power to enter into the Agreement and that it has complied with any and all applicable federal, State of Florida, and local procurement requirements in connection therewith; and
- b. it will utilize the System in compliance with all applicable federal, State of Florida, and local laws.

6.2.3. EXCEPT AS SET FORTH IN THE CONTRACT DOCUMENTS AND WITHOUT LIMITING ANY OF THE WARRANTIES SET FORTH THEREIN, INCLUDING THOSE SET FORTH IN SECTION 6.2.1 AND 6.2.2 OF THE AGREEMENT:

- a. THE PARTIES EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AS WELL AS ALL WARRANTIES ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.
- b. GATSO MAKES NO WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES AND/OR SYSTEM.

6.3. Force Majeure. Neither party shall be liable for delays in the performance of its obligations hereunder due to a Force Majeure Event. "Force Majeure Event" means conditions or other circumstances, such as acts of God, that: (i) were not foreseen, and could not have been reasonably foreseen, by the party obligated to perform, (ii) are beyond the control of the party obligated to perform, and (iii) materially hinder or interfere with the ability of the party obligated to perform to complete performance; provided, however, that no such condition or circumstance will be a Force Majeure Event if it is the result of the fault, negligence, or material breach of this Agreement by the party obligated to perform. Examples of Force Majeure events include wars, floods, strikes and labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, severe adverse weather conditions not reasonably anticipated, widespread internet outages or interference, and delays in permitting.

6.4. Relationship between Gatso and City. Gatso is an independent contractor. This Agreement does not create, and nothing in this Agreement may be deemed, construed, or applied to create, a partnership, joint venture or the relationship of principal and agent or employer and employee between the parties. Further, this Agreement does not permit either party to incur any debts or liabilities or obligations on behalf of the other party, except only as specifically provided herein.

6.5. Assignment. Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

6.6. Escalation Procedure. The following procedure will be followed if resolution is required to a conflict arising during the performance of this Agreement.

6.6.1. When a conflict arises between the City and Gatso, the project team members will first strive to work out the problem internally.

- 6.6.2.If the project team cannot resolve the conflict within five (5) business days, the City Project Manager identified pursuant to Section 5.1 and the Gatso Project Manager identified pursuant to Section 4.1 will meet to resolve the issue.
- 6.6.3.If the conflict is not resolved within five (5) business days after being escalated to the Project Managers, a senior executive of Gatso will meet with the City Manager or designee within five (5) days to resolve the issue.
- 6.6.4.If the conflict remains unresolved as described in Section 6.6.3, resolution will be addressed in accordance with the Modification Request procedure set forth in Section 4.6 or by mutual agreement to terminate the Agreement pursuant to Section 2.2.
- 6.6.5.During any conflict resolution, Gatso agrees to provide those Services relating to items not in dispute, to the extent practicable pending resolution of the conflict. The City agrees to pay invoices per the Agreement.
- 6.6.6.Noting in this Section 6.6 alters the timelines or right of the City or Gatso to terminate this Agreement as otherwise provided in this Agreement.
- 6.7. Applicable Law; Jurisdiction and Venue. (a) Gatso submits to the jurisdiction of the State of Florida, Alachua County and the courts thereof and to the jurisdiction of the United States District Court for the Northern District of Florida, for the purposes of any suit, action or other proceeding relating to this Agreement and agrees not to assert by way of motion or a defense or otherwise that such action is brought in an inconvenient forum or that the venue of such action is improper or that the subject matter thereof may not be enforced on or by such courts. (b) If at any time Gatso is not a resident of the State of Florida or has no agent available for service of process as a resident of the State of Florida, or if any permitted assignees shall be a foreign corporation, partnership or other entity or shall have no agent available for service in the State of Florida, Gatso consents to service on its designated agent for such purpose and designates the Secretary of State, State of Florida, its agent for service in any court action between it and the City relating to this Agreement and such service shall be made as provided by the laws of the State of Florida for service upon a non-resident: provided, however, that at the time of the service on the Secretary of State, a copy of such service shall be mailed by prepaid, registered mail, return receipt requested, to Gatso at the address for notices.
- 6.8. Cooperative Purchasing. This Agreement was subject to a competitive procurement by the City. Accordingly, other Florida entities may purchase from this Agreement, provided that each such entity has determined that the Agreement's use is cost-effective and in its best interest. Upon such determination, Gatso may, at its discretion, sell these services to such Florida entities, upon the terms and conditions contained herein.
- 6.9. Entire Agreement. This Agreement and its Exhibits may only be amended by a writing specifically referencing this Agreement which has been signed by authorized representatives of the parties. It constitutes the entire agreement between the parties about the Services and supersedes all prior and contemporaneous agreements or communications.
- 6.10.Counterparts. This Agreement may be signed in one or more counterparts, each of which will be deemed to be an original and all of which when taken together will constitute the same Agreement. Any copy of this Agreement made by reliable means (for example, photocopy or facsimile) is considered an original.

6.11. Enforceability. If any term in this Agreement is found by competent judicial authority to be unenforceable in any respect, the validity of the remainder of this Agreement will be unaffected, provided that such unenforceability does not materially affect the parties' rights under this Agreement.

6.12. Waiver. An effective waiver under this Agreement must be in writing signed by the party waiving its right. A waiver by either party of any instance of the other party's noncompliance with any obligation or responsibility under this Agreement will not be deemed a waiver of subsequent instances.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Gatso and the City of Gainesville have caused this Agreement to be executed by their properly authorized representatives as of the Effective Date.

Gatso USA, Inc.

City of Gainesville, Florida

By _____
Authorized signature

By _____
Authorized signature

Name (type or print):

Name (type or print):

Date:

Date:

Attested to:

By _____
Authorized signature

Name (type or print):

Date:

EXHIBIT A

Proposed Red Light Camera Locations

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

The City and Gatso may mutually agree to amend this list during the Term as set forth in Section 4.5.

EXHIBIT B

Customer Responsiveness Standards

The following customer responsiveness standards shall be maintained at all times and is subject to change upon appropriate notice by either party and approval by both parties.

1. Call Center Operating Hours

Customer service call center and payment by phone services shall be available at least Monday through Friday, 8 o'clock A.M. to 5 o'clock P.M. Eastern Time ("Call Center Hours").

Customer service and payment by phone services must be adequately staffed and be able to respond to customers not less than 45 hours per week (with a minimum of nine hours per day), excluding legal federal holidays.

As used herein, "adequately staffed" means customer service representatives are available to respond to customers who contact the service center in at least the following ways:

1. To accept payments;
2. To provide general red light camera program information; and
3. To respond to inquiries.

2. Telephone Answering Standards

Gatso shall maintain a toll-free telephone access line which shall be available to violators during Call Center Hours. Gatso shall provide an easily identifiable telephone number for customer service and payment by phone on all notices of violations and any other communications with violators.

Toll-free telephone lines, either staffed or with answering capability, providing at least after hours referral information, must be operated 24 hours a day, including weekends and holidays.

Trained company representatives shall be available to respond to customer telephone inquiries during Call Center Hours.

After Call Center Hours, the access line may be answered by a service or an automated response system, including an answering machine. Messages left by callers after Call Center Hours must be responded to by a trained company representative on the next business day.

3. Call Center Accessibility Standards

The call center will maintain services to assist customers with disabilities such as Telecommunication Devices for the Deaf (TDD). This includes, but is not limited to, meeting any applicable requirements provided by the Americans with Disabilities Act.

4. Telephone Answering Time

Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed forty-five (45) seconds from when the connection is made. When transitioning to a customer service representative, the caller shall hear a recording of the text included with this Exhibit B as Attachment A. The recording will be made available in English and Spanish. If the call needs to be transferred, transfer time shall not exceed forty-five (45) seconds.

While on hold, the caller shall hear a recorded message which is included in this Exhibit B as Attachment B.

Under normal operating conditions, callers shall receive a busy signal less than three (3) percent of the time.

5. Customer Representative Standards

Trained customer service representatives shall follow the script provided within this Exhibit B as Attachment C in all material respects. As the initial contact representative for the City, Florida's red light camera program, the City expects that each caller will receive excellent customer service at all times. This includes service provided by the initial call taker and any Gatso representatives such as management and supervisory staff that may interact with the caller. All customer service representatives and supervisors will maintain any required training and certifications required to perform their duties.

6. Customer Responsiveness Standards Reporting

Gatso shall use commercially reasonable efforts to: (a) maintain the call center hours of operation as described in Section 1 of this Exhibit B; and (b) meet the telephone answering time and busy signal standards set forth in Section 4 of this Exhibit B ("Responsiveness Standards no less than eighty percent (80%) of the time during each calendar month during the Term under normal operating conditions. Gatso shall measure its compliance with the Responsiveness Standards no less frequently than once per calendar quarter. Such measurements shall be made available by Gatso to the City upon written request.

ATTACHMENT A

Greeting:

Thank you for calling the Violation Processing Center. Please hold for the next available customer care representative. Your call will be answered in the order in which it was received. If you do not wish to hold, please visit our website at www.viewviolation.com [or similar URL implemented by Gatso in connection with the City's Red Light Camera Program]. Here you can get answers to frequently asked questions, read the city or village ordinance, view the video and/or photographic evidence of your violation, pay your fine or contest your citation.

Greeting w/Spanish option:

Thank you for calling the Violation Processing Center. Si usted habla espanol por favor oprima el 1.*

*Gracias por llamar a la Violation Processing Center. Por favor, mantenga para el próximo representante disponible de atención al cliente. Su llamada será contestada en el orden en que se recibió. Si no se desea conservar, por favor visite nuestro sitio web en www.viewviolation.com. Aquí usted puede obtener respuestas a preguntas frecuentes, lea la ordenanza de la ciudad o pueblo, ver el video y las pruebas fotográficas de su violación, paga su multa o concurso de su citación.

ATTACHMENT B

Recording while on hold:

Did you know that you can get answers to frequently asked questions, read the city or village ordinance, view the video and photographic evidence of your violation, pay your fine or contest your citation by going to our website? Please visit www.viewviolation.com [or similar URL implemented by Gatso in connection with the City's Red Light Camera Program] and type in your citation number and pin number which can be found on the front of your citation at the top right corner. If you would like to speak with a customer care representative, please continue to hold.

ATTACHMENT C

FL Violation Processing Center Phone Script

Recommended Greeting:

“Good Morning (Good Afternoon) Violation Processing Center. How may I help you?”

Common Questions and responses

Q. How do I make a payment?

A. Explain the options of over the phone or online with Visa or Master credit/debit cards or by mail using a personal check, cashiers check or money order. We go by the post mark date on the envelope.

Q. How can I contest?

A. Suggest the citizen reviews the video if they have not already done so. Explain that in FL they can only contest using the affidavit if they qualify for one of the “allowable defenses”. If they do, they must fill out the affidavit, have it notarized and mail it in prior to the due date on the notice. If they wish to contest for a reason not listed on the affidavit they must wait for the UTC to be issued to contest in court.

Q. There isn’t a sign stating “No Turn on Red” so why did I receive a citation?

A. Explain that right on red is allowed as long as there is a complete stop before making the turn.

Q. How do you know I didn’t stop?

A. Explain how the citizen can view the 6 sec video online.

Q. I wasn’t driving my vehicle at the time.

A. The alleged violator can send in a notarized affidavit supplying us with the driver’s information and we can transfer liability.

Q. A family member of the registered owner calls to report that the citizen has passed away since the date of the citation.

A. Mail, fax or bring a copy of the Death Certificate to the Code Enforcement Division.

Q. I refuse to pay this, what are you going to do.

A. If you fail to pay the violation before the due date and UTC carrying a higher fine will be issued. If you do not pay the UTC by the due date your driver’s license may be suspended.

Q. Can I make payments?

A. Explain that we are unable to accept partial payments and partial payments will be returned if received in the mail.

Q. I sold my vehicle, so why is this still in my name?

A. Explain we use the information DMV has on file. If they can provide proof of re-registration have them fax or mail the proof with an affidavit to the VPC.